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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

THOMAS A. SIMONIAN,

Plaintiff,

vs.

MONSTER CABLE PRODUCTS, INC.,

Defendant.

Case No. 5:10-cv-05544-LHK

**JOINT STIPULATION AND  
[PROPOSED] ORDER TO DISMISS**

Judge: The Honorable Lucy H. Koh

WHEREAS on September 16, 2011, President Obama signed the Leahy-Smith America  
Invents Act, H.R. 1249, 112<sup>th</sup> Cong. (2011) (the “Act”) into law.

1 WHEREAS the Act amended 35 U.S.C. §292 in a way that limits who may sue under this  
2 section to: (a) the United States or (b) a person who has suffered a competitive injury as a result  
3 of a violation of section 292.

4 WHEREAS the Act also provides for a retroactive effect of the amendments to section  
5 292 by stating that: “amendments made by this subsection shall apply to all cases, without  
6 exception, that are pending on, or commenced on or after, the date of the enactment of this Act.”  
7

8 WHEREAS Plaintiff Simonian has not suffered a competitive injury as a result of a  
9 violation of section 292 and therefore does not have standing to sue Defendant Monster Cable  
10 Products, Inc. for a violation of section 292.

11 NOW, THEREFORE,

12 IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES HERETO,  
13 through their respective counsel, that:  
14

15 a) Except as specifically provided in b) below, this case is dismissed: (i) without prejudice  
16 to the United States’ right to refile its own claim under 35 U.S.C. §292 for the penalty  
17 provided; (ii) with prejudice to the Plaintiff solely on the basis that the Act has  
18 retroactively eliminated Plaintiff’s standing to bring a claim under 35 U.S.C. §292  
19 against the Defendant Monster Cable Products, Inc.; and (iii) with each party bearing its  
20 own attorneys’ fees, costs and expenses.

21  
22 b) In the event (and only in the event) that the Act (or the portion thereof that pertains to  
23 amendments to 35 U.S.C. §292) is held unconstitutional (as retroactively applied to  
24 relators like Mr. Simonian, or otherwise), Plaintiff Simonian may reinstate this litigation  
25 within 45 days thereof, provided the applicable limitations period has not run.  
26  
27  
28

1 Dated: September 21, 2011

2 EUGENE M. CUMMINGS, P.C.

LARIVIERE, GRUBMAN & PAYNE, LLP

3 BY: \_\_\_\_\_/s/

BY: \_\_\_\_\_/s/

4 Martin Goering

Robert W. Payne

5 Attorney for Plaintiff  
6 THOMAS A. SIMONIAN

Attorney for Defendant  
MONSTER CABLE PRODUCTS, INC.

7  
8  
9 Filer's Attestation: I, Vinh Pham, am the ECF User whose identification and password  
10 are being used to file this Joint Stipulation and [Proposed] Order. Pursuant to General Order  
11 45.X.B, I hereby attest that Martin Goering and Robert W. Payne have concurred in this filing.  
12

13 Dated: September 21, 2011

By: \_\_\_\_\_/s/

14 Vinh Pham

15  
16  
17  
18 **PURSUANT TO STIPULATION OF THE PARTIES,**

19 This case is DISMISSED. The clerk shall close the file.

20  
21 **IT IS SO ORDERED.**

22  
23  
24 Dated: September 22, 2011

25 *Lucy H. Koh*  
26 Honorable Lucy H. Koh  
27 United States District Court  
28

